

Dear Mr. President...

On the question of torture and cruel, inhuman or degrading treatment

Irene Khan

*The Secretary General of
Amnesty International
wrote to the President of the
United States on 7 May
2004.*

Dear Mr President,

The world is watching as your administration responds to the most recent evidence of torture and degrading treatment of Iraqis at the hands of US personnel. While Amnesty International welcomes official statements that the allegations are being taken seriously, the ultimate proof of this will be in actions not words. In this regard, your government's record in the context of 'war on terror' detentions gives cause for concern, as fundamental principles of law and human rights continue to be violated despite the administration's stated commitment to these principles.

Amnesty International recalls your statement on 26 June 2003, made on the occasion of the United Nations International Day in Support of Victims of Torture, in which you said that 'the United States is committed to the worldwide elimination of torture and we are leading this fight by example'. The organization urges you now to ensure that the USA fully meets its international obligations, including as a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to investigate all allegations of torture and ill-treatment, publish all findings, prosecute all perpetrators, compensate all victims, and prevent any future torture or cruel, inhuman or degrading treatment. We call on the USA to open the doors of its detention facilities in Iraq, Afghanistan, Guantánamo Bay, and at undisclosed locations elsewhere, to independent bodies, including visits by United Nations Special Rapporteurs.

In July 2003, Amnesty International sent your government a *Memorandum on Concerns Relating to Law and Order* in Iraq. The Memorandum included allegations of torture and ill-treatment of Iraqi detainees by US and Coalition forces.¹ The allegations included beatings, electric shocks, sleep deprivation, hooding, and prolonged forced standing and kneeling. We have never received a response or

any indication from the administration or the Coalition Provisional Authority that an investigation took place. Likewise, we have never received a response to the *Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay* which we sent to you in April 2002, and which also raised concerns about questions and allegations of torture and ill-treatment.²

The military investigation in Iraq headed by Major General Antonio Taguba found 'systemic and illegal abuse of detainees' in the Abu Ghraib facility (Baghdad Central Confinement Facility, BCCF) between August 2003 and February 2004, and concluded that soldiers had 'committed egregious acts and grave breaches of international law at Abu Ghraib/BCCF and Camp Bucca, Iraq'. Amnesty International is concerned that the Taguba report was not intended for public release, and that the administration's current response has only come once the report and the photographic evidence came into the public domain.

At the Department of Defense news briefing on 4 May 2004, Secretary of Defense Rumsfeld said that he was 'stunned' by the allegations. In one of several statements apparently downplaying the seriousness of the allegations, however, he added that his 'impression is that what has been charged so far is abuse, which I believe technically is different from torture'. Amnesty International stresses that the 'numerous incidents of sadistic, blatant, and wanton criminal abuse' found by the Taguba investigation constitute acts of torture or cruel, inhuman or degrading treatment, in violation of international law. The Fourth Geneva Convention (Article 147, Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949) lists 'torture or inhuman treatment', without distinguishing among the two in terms of gravity, among their 'grave breaches'. These are war crimes and are the most serious offences that every High Contracting Party to the Conventions must prevent and suppress, including by prosecuting the perpetrators. The incidents recorded in the Taguba report include:

Punching, slapping, and kicking detainees; jumping on their naked feet; Videotaping and photographing naked male and female detainees; Forcibly arranging detainees in various sexually explicit positions for photographing; Forcing detainees to remove their clothing and keeping them naked for several days at a time; Forcing naked male detainees to wear women's underwear; Forcing groups of male detainees to masturbate themselves while being photographed and videotaped; Arranging naked male detainees in a pile and then jumping on them; Positioning a naked detainee on a MRE Box, with a sandbag on his head, and attaching wires to his fingers, toes, and penis to simulate electric torture; Writing 'I am a Rapest' (sic) on the leg of a detainee alleged to have forcibly raped a 15-year old fellow detainee, and then photographing him naked; Placing a dog chain or strap around a naked detainee's neck and having a female Soldier pose for a picture; A male MP guard having sex with a female detainee; Using military working dogs (without muzzles) to intimidate and frighten detainees, and in at least one case biting and severely injuring a detainee.

Major General Taguba also found 'credible' evidence that the following abuses took place:

Breaking chemical lights and pouring the phosphoric liquid on detainees; Threatening detainees with a charged 9mm pistol; Pouring cold water on naked detainees; Beating detainees with a broom handle and a chair; Threatening male detainees with rape; Allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; Sodomizing a detainee with a chemical light and perhaps a broom stick.

The Taguba report emphasized that the findings were ‘amply’ supported by confessions from suspected perpetrators, statements from detainees and witnesses, as well as ‘extremely graphic photographic evidence’.

The report found that there was a failure to establish clear training, procedures and oversight on interrogation and treatment of detainees, and ‘that very little instruction or training’ was provided to military police personnel on the applicable rules of the Geneva Conventions.

At the 4 May Pentagon briefing to respond to the allegations, Secretary Rumsfeld maintained that ‘the fact is, this is an exception’, and added that ‘there may be things that we can do that would be helpful in helping the world understand that this is an exceptional situation; it is not a pattern or a practice.’ Although he acknowledged that there ‘are allegations of abuse in various other locations’, he added that ‘at any given time there are always allegations and charges of abuse in detention facilities’ and that there ‘is a pattern and a practice of terrorists to allege abuse’.

A pattern of abuse

During the past two years, consistent allegations of brutality and cruelty by US agents against detainees, including in Iraq and Afghanistan, have been presented by Amnesty International and others at the highest levels of the US Government, including the White House, the Department of Defense, and the Department of State.

Numerous people who have been held in the US Air Bases in Bagram and Kandahar in Afghanistan have spoken of the torture or other cruel, inhuman or degrading treatment to which they say they were subjected in US custody in Afghanistan.³ For example, former Guantánamo detainee Wazir Mohammad recalled to Amnesty International in February 2004 his detention in US custody in Afghanistan in 2002. He spoke of the excessive and cruel use of shackles and handcuffs, sleep deprivation, and of being forced to crawl on his knees from his cell to the interrogation room, a crawl of about 10 minutes. His testimony echoes that of numerous other former detainees.

As with hundreds if not thousands of other detainees, during his whole time in Bagram and Kandahar, Wazir Mohammad was held incommunicado. He was given no opportunity to challenge the lawfulness of his detention. He had no lawyer, no access to his family, and was not brought before any court, including the ‘competent tribunal’ envisaged by the Geneva Conventions to determine prisoner status in time of war. He never met a delegate from the International Committee of the Red Cross (ICRC) either. During more than a year in Guantánamo he says he met an ICRC delegate once, on the first day.

Last month in Yemen, Amnesty International spoke with another former

Guantánamo prisoner, Walid al-Qadasi. He recalled his time in a secret detention facility in Kabul, interrogated by US agents. He said that the first night of interrogation had been coined by the prisoners as 'the black night'. He told Amnesty International that: 'They cut our clothes with scissors, left us naked and took photos of us, before they gave us Afghan clothes to wear. They then handcuffed our hands behind our backs, blindfolded us and started interrogating us... They threatened me with death, accusing me of belonging to *al-Qa'ida*. They put us in an underground cell measuring approximately two metres by three metres. There were ten of us in the cell. We spent three months in the cell... During the three month period in the cell, we were not allowed outside into the open air.' He alleged that the detainees were subjected to sleep deprivation, including by the use of loud music.

Incommunicado detention facilitates torture and ill-treatment. In his report to the UN Commission on Human Rights in 2004, the Special Rapporteur on torture 'reiterates the recommendation of his two predecessors and urges all States to declare incommunicado detention illegal'. The Special Rapporteur added that 'incommunicado detention is aggravated when individuals are held in secret places of detention' and that 'it should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention'.

The USA cannot claim to be leading the struggle against torture by example, when the example it is setting is one of using prolonged incommunicado detention, including in undisclosed locations. Transparency, access and accountability are the most effective measures against torture and ill-treatment. The USA should employ these measures and truly lead by example.

Amnesty International has previously expressed concern about the mixed messages which the US government has sent regarding its commitment to international human rights standards. In June 2003, the administration issued a strong statement that government policy was to 'comply with all of its legal obligations in its treatment of detainees, and in particular with legal obligations prohibiting torture'.⁴ At the same time it has failed to comply with the Geneva Conventions with regard to the Guantánamo detainees.⁵ When the USA unilaterally decides whether or not to affirm the rights of individuals protected by international treaties and agreements, this may send a message to troops and others that the government is set on a course in which international agreements can be ignored or set aside at the discretion of the executive for the sake of expediency.

Intelligence and interrogation

Amnesty International has also recently spoken to a person who has worked in Guantánamo who has said that most if not all the detainees he had contact with there (approximately 40) had alleged that they were physically abused in Kandahar or Bagram. Based on this knowledge, this person expressed no surprise at the recent evidence emerging from Iraq, and stated that the abuse in Afghanistan appeared to be part of softening up detainees for interrogation and detention.

The Taguba report presents evidence that the abuse allegedly inflicted on the detainees in Iraq followed requests from military intelligence and other government

interrogators that the military police (MP) guards in the prison ‘set physical and mental conditions for favourable interrogation of witnesses’. Guards alleged that military intelligence personnel had given instructions including ‘loosen this guy up for us’, ‘make sure he has a bad night’; ‘make sure he gets the treatment’; and ‘Good job, they’re breaking down real fast. They answer every question. They’re giving out good information, Finally, and Keep up the good work. Stuff like that.’

At a Coalition Provisional Authority Briefing in Iraq on 4 May 2004, Major General Geoffrey Miller stated that while physical contact between interrogator and detainees is prohibited, ‘sleep deprivation and stress positions and all that could be used. But they must be authorized’. The United Nations Committee against Torture, the expert body established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has expressly held that restraining detainees in very painful positions, hooding, threats, and prolonged sleep deprivation are methods of interrogation which violate the prohibition on torture and cruel, inhuman or degrading treatment.

Amnesty International notes that Major General Miller commanded the Guantánamo detention operation until he was recently put in charge of detainee operations in Iraq. The Taguba report notes that from ‘31 August to 9 September 2003, MG Miller led a team of personnel experienced in strategic interrogation to [Iraq] to review current Iraq Theater ability to rapidly exploit internees for actionable intelligence’. The Taguba report also noted that Major General Miller’s team had stated that ‘it is essential that the guard force be actively engaged in setting the conditions for successful exploitation of the internees.’ It seems that the alleged torture and ill-treatment at the centre of the Taguba report began around this time.

The Taguba report holds that ‘Military Police should not be involved with setting “favourable conditions” for subsequent interviews. These actions...clearly run counter to the smooth operation of a detention facility.’

Access for human rights monitors

The US administration has denied access to independent human rights monitors, including Amnesty International, to places of detention. We again recall your statement of 26 June 2003, promising the USA’s commitment to eradicating torture, in which you said: ‘Notorious human rights abusers, including, among others, Burma, Cuba, North Korea, Iran, and Zimbabwe, have long sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors.’ We urge you to ensure such access is granted now, to all US detention facilities.

While the International Committee of the Red Cross has had access to detainees, even this access is reported not to have been full and ongoing in some instances, including in Bagram Air Base, and at undisclosed locations elsewhere. In this regard, we are concerned by the following entry in the Taguba report:

The various detention facilities operated by the 800th MP Brigade have routinely held persons brought to them by Other Government Agencies (OGAs) without accounting for

them, knowing their identities, or even the reason for their detention. The Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib called these detainees 'ghost detainees.' On at least one occasion, the 320th MP Battalion at Abu Ghraib held a handful of 'ghost detainees' (6-8) for OGAs that they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team. This maneuver was deceptive, contrary to Army Doctrine, and in violation of international law.

Deaths in custody

Two men who died in US custody in December 2002 in Bagram Air Base in Afghanistan had not been seen by the International Committee of the Red Cross. The official autopsies recorded the cause of their deaths as 'homicide' and found 'blunt force injuries' in both cases. Amnesty International was informed by Chief of Public Affairs at the US Army Criminal Investigation Command on 6 May 2004 that the investigations into their deaths are continuing but that the investigation 'is close to completion'. It is now 17 months since the two men died. Investigations into another dozen cases of deaths in US custody in Iraq and Afghanistan are reported to be underway.

Amnesty International repeats here one of the allegations made in the journal of Staff Sergeant Ivan L. Frederick concerning a death in custody of an Iraqi prisoner in Abu Ghraib: 'They stressed him out so bad that the man passed away. They put his body in a body bag and packed him in ice for approximately 24 hours in the shower... The next day the medics came in and put his body on a stretcher, placed a fake IV in his arm and took him away.' Frederick stated that the prisoner had never been recorded in the prison system 'and therefore never had a number'.

We emphasise that all deaths in custody must be investigated and that the results of all these investigations must be made public. If anyone is found to have died as a result of torture, his or her dependants would be entitled to compensation, under Article 14 of the Convention against Torture. Those found responsible must be brought to justice.

Amnesty International's recommendations

Amnesty International urges the US Government to:

- investigate the allegations at Abu Ghraib prison, Iraq, and other detention facilities to establish whether war crimes have been committed and ensure accountability at the highest level;
- bring to justice those responsible for war crimes and other violations in accordance with the USA's obligations under international and US law. Such investigations should not just cover the direct perpetrators, but must include the higher chain of command responsibility;
- initiate investigations into all other allegations of abuse of detainees held in US custody in Iraq, Afghanistan and elsewhere;
- suspend from duties any public officials involved pending the outcome of the investigation and any subsequent legal or disciplinary proceedings;
- ensure, through appropriate policies, training and oversight, that torture or

- other cruel, inhuman or degrading treatment will not be tolerated. All detainees in US custody must be treated humanely and in accordance with US obligations under international human rights and humanitarian law;
- launch a full investigation into interrogation practices of detainees in US custody wherever they are held around the world and make the findings public;
 - prohibit all techniques during interrogations which violate the prohibition against torture or other cruel, inhuman or degrading treatment. These include such techniques as holding detainees naked, making them assume painful positions, sleep deprivation, exposure to extreme cold, and hooding;
 - ensure that private contractors uphold US and international law, and that they receive adequate training on human rights practices and protections.
 - end the practice of incommunicado detention. Provide immediate access to detainees to their families and lawyers, ensure regular access to the ICRC in all places of detention and access for independent human rights organizations, including representatives of Amnesty International, into detention facilities;
 - invite the United Nations experts covering torture and arbitrary detention to immediately visit US detention facilities in Iraq and wherever else they may seek such a visit.
 - make use of the services of the International Humanitarian Fact-Finding Commission provided for by Article 90 of Additional Protocol I of the Geneva Conventions to look into the allegations of abuse and related US investigations.
 - ensure that any victims of torture or inhumane treatment receive full reparations, including compensation, as required under international law.

I trust that you will give due consideration to the concerns raised in this letter.

Yours sincerely

Irene Khan

Secretary General

cc Secretary of Defense Donald Rumsfeld

Secretary of State Colin Powell

Notes

1 <http://web.amnesty.org/library/Index/ENGMDE141572003>

2 <http://web.amnesty.org/library/Index/ENGAMR510532002>

3 See USA: The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue, AI Index: AMR 51/114/2003, August 2003, <http://web.amnesty.org/library/Index/ENGAMR511142003> USA: Undermining security: Violations of human dignity, the rule of law and the National Security Strategy in ‘war on terror’ detentions, AI Index: AMR 51/061/2004, 9 April 2004

<http://web.amnesty.org/library/Index/ENGAMR510612004>

4 Letter to US Senator Patrick J Leahy from William J. Haynes, dated 25 June 2003

5 Amnesty International and others, including the ICRC, have repeatedly expressed concern that none of the detainees has been brought before a ‘competent tribunal’ to determine his status, as required by Article 5 of the Third Geneva Convention.